THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :19008 of 2006

DATED:28-06-2007

BETWEEN:

Adabala Babu Rao.

..... PETITIONER

AND

The Commissioner of Prohibition & Excise,
Government of Andhra Pradesh,
Hyderabad & 4 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner; learned counsel appearing for the respondents 1 to 4; and the learned counsel appearing for the 5th respondent.

2. Petitioner seeks a writ of mandamus to declare the action of the official respondents 1 to 4 in treating the village as one unit, as illegal, and ultravires to the provisions of Articles 14 and 19(1) (g) of the Constitution of India, besides being violative of the provisions of the Act and Rules framed on the subject, besides directing the respondents 1 to 4 to fix the shops area wise/locality wise even in the villages.

3. It is the case of the petitioner that the Government of Andhra Pradesh vide G.O.Ms.No.998 Revenue (Excise II), dated 24-05-2005, in exercise of the powers conferred under Section 72 r/w Sections 17, 28 and 29 of the Andhra Pradesh Excise Act, 1968 (17 of 1968) and Ordinance 5 of 2005, issued rules called the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005
(for brevity, 'the Rules') for grant of lease of right to sell Indian made foreign liquor and foreign liquor by shop wise.
Sealed tenders from the public were invited after due notification for a period of two years commencing from

01-07-2006 to 30-06-2008. Under Rule 4 of the Rules the Commissioner of Prohibition & Excise having due regard to requirement, public order, health, safety and other factors fixed the number of shops to be established in an area/locality before the publication of the auction notice under Rule 5 of the Rules. The auction notice dated

27-05-2006, was published before seven days of the date of auction by the District Collector, West Godavari District.

The gazette notice shall contain the serial number and the name of the area/locality, where the shop will have to be established, the last date, time and place for receipt of tenders, place of auction with time and date, the conditions governing the auction, the lease period and any other matter which maybe considered necessary by the auctioning authority. It is stated that as per Rule 4 of the Rules the particular area/locality of a shop has to be notified.

It is further stated that under Rule 27 of the Rules it is for the successful tenderer of particular Municipality, Municipal Corporation, village/town/city or area/locality as the case may be as notified in the District Gazette to select suitable premises outside the prohibited areas specified therein.

It is stated that the number of shops to be notified in the corporations, where the legal requirement is to notify the areas/localities, the area has been divided into divisions and if it is municipality into wards and villages are divided into wards.

4. It is stated that contrary to the aforesaid legal requirement the District Collector, West Godavari District published auction notification in the District gazette, dated 27-05-2006, issuing notice

of auction to grant lease of right to sell Indian made foreign liquor, foreign liquor by shop under Rule 5 of the Rules for the lease of right to sell the shop for a period of two years from 01-07-2006 to 30-06-2008 notifying the tenders in sealed cover before 5.00 p.m., on
02-06-2006 in the office of the Prohibition & Excise, West Godavari District, and the shops have been specified in the list appended to the said notification.

5. A perusal of the list appended to the said notification goes to show that insofar as the Eluru municipal corporation is concerned areas have been notified specifying the divisions. Insofar as the municipalities are concerned, the wards have been notified, but insofar as the villages are concerned, though more than one shop has been notified, the wards/localities have not been notified. It is stated that in respect of Undi village of Undi mandal, four shops have been notified at S.No.146 to 149 in the said notification. In respect of four shops, Undi No.1, Undi No.2, Undi No.3 and Undi No.4 of Undi village, different upset prices have been fixed.
In respect of Undi shop No.1 the upset price is fixed at Rs.32,04,936/-; Undi Shop No.2 Rs.34,95,578/-; Undi Shop No.3 Rs.29,60,492/-; and Undi Shop No.4 Rs.27,16,052/-.
It is stated that without earmarking the area/locality of Undi village fixing different upset prices is illegal, arbitrary, and contrary to the aforesaid Rules. Hence, the present Writ Petition.

6. A perusal of the Rules goes to show that as per Rule 4 of the Rules, the Commissioner of Prohibition & Excise having regard to

requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in an area/locality before the publication of the auction notice. It appears the Commissioner fixed four shops in Undi village and the District Collector notified four shops in the said village without specifying the particular area/locality but different upset prices have been fixed.

7. The contention of the learned counsel appearing for the petitioner is that he has become the highest bidder/tenderer in respect of Undi shop No.2 on yearly lease of Rs.35,36,995/- as against the upset price of Rs.34,95,578/- whereas the other highest tenderers in respect of Undi Shop Nos.1, 3 and 4 have tendered a little bit more than the upset price much less than the petitioner. It is further stated that the 4th respondent who was the licencee of shop No.2 of the last year and though he is the licencee of Undi Shop No.4 he is continuing in the same premises and therefore, not fixing the area/locality is illegal, arbitrary, and contrary to the Rules.

8. A perusal of Rule 4 of the Rules goes to show that for a village, municipality, municipal corporation, the Commissioner has to fix the number of shops in the area/locality. In the same area/locality any number of shops can be fixed and there is no prohibition. Within the same area also there can be difference with regard to the potentiality of the business but in the instant case four shops have been notified in Undi village without specifying the area/locality of Undi village and different upset prices have been

fixed.

Rules 4 and 5 go to show that the fixed number of shops in an area/locality of a particular village, municipality, corporation, and the serial number, name of the area/locality of a shop also is to be notified in the auction notice.

The area/locality has got significance with reference to the selection of the premises under Rule 27. Under Rule 27 of the Rules the successful bidder has to select the suitable premises within the area/locality of a particular village, town, city, municipality, municipal corporation. Therefore, I am of the opinion that not notifying a particular area/locality is illegal, arbitrary, and contrary to the Rules 4, 5 and 27 of the Rules. However, I am of the opinion that the petitioner is not entitled for any relief as admittedly with his eyes wide open accepted the terms and conditions of the auction notice, participated in the auction proceedings, and became the highest tenderer. Had the petitioner questioned the said illegal action of the respondents before auction, he would have got a relief directing the respondents to fix the particular area/locality of the village, town, municipality, corporation as the case may be, but having participated in the auction, having become the highest bidder, having taken the licence, and having executed the counterpart it is not open for the petitioner to get a relief of dividing the area/locality in respect of the aforesaid four shops.

9. It also requires to be noticed that there is no prohibition to fix particular number of shops in a particular area, locality, ward or divisions, as the case may be. Any number of shops can be fixed

in one ward or in one division. The intention in fixing the number of shops in a particular area/locality is only to enable the intending auction purchaser to take into consideration the relevant factors, such as, number of shops notified in a particular area/locality. When four shops have been notified in the village, no doubt, there could have been an objection or demand to earmark the particular area/locality of the shops but there cannot be any legal objection to notify all four shops in one ward also and there cannot be any fixed area of operation for each shop, as all the consumers can purchase the liquor from one particular shop; as there is no prohibition not to purchase the liquor from one particular shop. Therefore, it is for the intending bidders to take all the business hazards into consideration and bid for it. There is no fixed quota for each shop for supply of Indian made foreign liquor and foreign liquor and all the licencees have been provided with equal opportunities to do the business. Therefore, I am of the opinion that nobody compelled the petitioner to take a particular shop whose upset price had been fixed higher than the other three shops. In view of the aforesaid facts and circumstances of the case,

I am of the opinion that the petitioner is not entitled for any relief in the writ petition.

Accordingly, the Writ Petition is dismissed. No order as to costs.

V.ESWARAIAH, J

28th June, 2007.

Note:

Furnish C.C. of the order
within one week.

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